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NOTES

MONTANA BAR ADMISSION STANDARDS: A COMPARATIVE STUDY

Lawyers nationwide have, in the past few years, become increasingly aware of and concerned by the public's somewhat adverse view of the legal profession. The problem is almost as ancient as the profession itself, but only in the last few years have most American lawyers seriously considered attempting to do anything about it.

It is entirely possible that an accelerated national public relations program, similar to that conducted by the American Medical Association, might have very beneficial effects. But the more basic need is for maintenance and improvement of the caliber of the membership of the bar—both in character and professional competence. This approach is predicated on preventing entry to the profession by the proverbial few “bad apples.” Hence attention has recently centered on the question of whether admission standards should be modified.

Prior to the 1959 legislative session, a group of Gallatin County attorneys prepared a draft bill which would have required a pre-law college degree, an approved law school degree, and a bar examination of all candidates for admission to the bar except those who had been admitted for two years in another jurisdiction. The legislation was never introduced, but its preparation illustrates the present-day interest of Montana attorneys in improving standards. This Note is not intended to present any comprehensive proposals for revision of the existing rules, but rather to provide the legal profession in Montana with a comparative appraisal of our current admission standards, and to make a few very general suggestions.

MONTANA ADMISSION RULES

By Examination

The Montana rules governing admissions to the bar appear in part XXV of the Rules of the Supreme Court, contained in volume 127 of the Montana Reports.¹ The rules are supplemented by the code provisions governing attorneys.²

All applicants for admission to the bar must satisfy the following general requirements: citizenship, good moral character, twenty-one years of age, and bona fide residence in the state for at least six months prior to application.

Pre-Law College Education

Applicants for admission by examination are faced with a contradictory and anomalous requirement regarding pre-law college work. Rule XXV B states the applicant must show

that he possesses qualifications equivalent to those which are re-

¹The admissions rules have not been changed since they were published in 1954. Letter from Chief Justice James T. Harrison to the author, March 16, 1959, on file in the *Montana Law Review* office.

²REVISED CODES OF MONTANA, 1947, §§ 93-2001 to -2007, -2013 to -2015. (Herein after REVISED CODES OF MONTANA are cited R.C.M.).

quired of a 'regular' student who enters the Law Department of the State University of Montana as an applicant for a degree; that is to say, the evidence presented by him must satisfy the entrance requirements of the University of Montana and in addition must disclose that he has completed *two years' work in a university or college of recognized standing, or the equivalent*. (Emphasis added.)

In the past the rule has apparently been interpreted as requiring only two years of pre-law college, or its equivalent. Applicants have been permitted to show "equivalent" qualifications by passing a two-year college equivalency examination administered by the Montana State University committee on admission and graduation.⁸ The difficulty with the above rule is that Montana State University requires that college work be taken in residence, and since January 1, 1954, has required three years of pre-law college work as a prerequisite to law school admission.⁴ This requirement was effective the same month the court rules on bar admissions were amended, so the court was undoubtedly unaware of the change. Nevertheless, the present rule is ambiguous as to whether two or three years of pre-law collegiate study is required.

The rule is also ambiguous as to whether any particular grade average is required for the pre-law study. The Montana State University School of Law requires that all pre-law college work be completed "with a scholastic average at least equal to the average required for graduation in the institution attended. . . ."⁵ The above-quoted rule is silent on this point, but a passing average may be impliedly required.

Law Study

R.C.M. 1947, section 93-2002 requires "two successive years" of law study as a general qualification, without specifying or limiting the form of study. Rule XXV B does not impose any additional limitation. In practice the rule has been interpreted as permitting the legal study to be in law school, by correspondence, or by study in a law office.⁶ The rule does not specify any maximum period within which legal study must be completed; it does not require students to register with the court or bar examiners at the time they begin their legal training; nor does it require that study in a law school be completed at a school approved by the American Bar Association or the Association of American Law Schools.

At least until 1952, and possibly since that time, the court has been very liberal in its interpretations of what constituted the "diligent study of law for two successive years." On one occasion the court found satisfactory compliance with the rule by a student who had failed the first year of law school, repeated the entire course, and been dropped at the end of his

⁴Metcalfe, *A Survey on Admission to Practice Law in Montana*, 13 MONT. L. REV. 1 (1952). Mr. Metcalfe was writing in his then capacity of Associate Justice of the Supreme Court of Montana. His conclusions, however, reflect only the practice of the court up to that date. It is entirely possible that some of the court's detailed interpretations and procedures have been changed since that date without this author's knowledge.

⁵1953 MONTANA STATE UNIVERSITY BULLETIN (containing the 1953-1955 Catalog) 96.

⁶*Ibid.* See also the MONTANA STATE UNIVERSITY 1958-59 GUIDEBOOK 51.

⁸Note 3 *supra*, at 5, 7, 8.

second year.' No court supervision whatever has been exercised over students studying by correspondence or in law offices; however for students studying in law offices, the supervising attorneys make a statement to the court regarding time spent studying law, etc.⁹

Moral Character Requirements

The rule on character requirements of examinees⁹ states that the applicant "shall file with his petition the affidavit of each of three responsible citizens, two of whom must be members of the Bar, stating that the applicant is a person of good moral character, which affidavit must set forth how long a time, when and under what circumstances affiant has known the applicant." There is no universal requirement of any additional investigation, and no fingerprinting or police check is run in all cases. However, Chief Justice Harrison has stated that "the court does not rely exclusively on the character affidavits required by the rules, but conducts such investigation as it feels necessary in each instance. This is particularly true where the applicant is unknown to any member of the court."¹⁰

Of course the applicant must pass the examination, in addition to fulfilling the other foregoing requirements, to be eligible for admission. Further, the applicant must state an intention to actively practice law in Montana if admitted.

Admission on Motion for Attorneys from Other Jurisdictions

An attorney admitted to practice in another jurisdiction who fulfills the general qualifications of age, citizenship, and character, may be admitted without examination if he has actively practiced law in his former jurisdiction for two successive years immediately prior to his Montana application, and intends to actively practice law in Montana if admitted.¹¹ In addition, he must furnish at his own expense a report of investigation by the National Conference of Bar Examiners, concerning his character, reputation, experience, and qualifications.

In his petition for admission by reciprocity, the attorney must specify where and when he studied law; where he was first admitted to practice; all places and times he has practiced; whether he has ever been subjected to a disbarment or criminal proceeding, and the circumstances and results of any such proceeding. In addition to the report of investigation by the N.C.B.E., the applicant must submit the same three affidavits of good character required of examinees, and a "certificate of the presiding judge of the highest court of record of the jurisdiction in which the petitioner last practiced, . . . showing that the petitioner was of good reputation, and trustworthy in the practice of his profession as attorney and counsellor-at-law in such jurisdiction."¹²

⁹Note 3 *supra*, at 8.

¹⁰*Ibid.*

¹¹RULES OF THE SUPREME COURT OF MONTANA, 127 Mont. xxxi (1954), Rule XXV B 2.

¹²Letter, note 1 *supra*.

¹³Note 9 *supra*, Rule XXV C.

¹⁴*Ibid.* The requirement of R.C.M. 1947, § 93-2005, that an attorney seeking admission on motion shall produce his license to practice in the former jurisdiction, would seem a mere formality in light of the requirement of this court certificate.

Rule XXV A imposes the further limitation that admission by reciprocity will not be extended on any more favorable terms than a Montana attorney would be admitted on in the jurisdiction from which the petitioning attorney comes. Any restrictions of the latter jurisdiction are automatically adopted.

The court reserves the right to require an examination of any attorney seeking admission on motion.

There is, however, one provision in the rules on reciprocal admissions which seems quite ambiguous. Rule XXV C 1 seems to clearly require that any applicant for admission on motion must have "actively been engaged in the practice of law for at least two years immediately prior to his application here." On the next page of the rules, however, under subdivision 2, the following appears: "if he has *never practiced* and not more than one year has elapsed since his admission, he shall so state." (Emphasis added.) It would seem that this latter provision is either surplusage, or it authorizes admission on motion of attorneys who have been admitted in other jurisdictions but have never practiced. Which interpretation the court intended is not clear.

Diploma Privilege

R.C.M. 1947, section 93-2002, provides in part that

a diploma from the department of law of the university of Montana at Missoula, or evidence of having completed the course in law of three years of said department, shall entitle the holder to a license to practice law in all courts of this state, subject to the right of the chief justice of the supreme court of the state to order an examination as in ordinary cases of applicants without such diploma or evidence.

This portion of the statute has been in force since 1915.¹³ Although the court rules are silent regarding the diploma privilege, graduates of the Montana State University School of Law have long been admitted on motion without examination. A separate section of this Note below will consider the diploma privilege in detail.

ADMISSION REQUIREMENTS OF OTHER JURISDICTIONS

The relative status of Montana's bar admission standards may be most readily appreciated by comparing them with the standards of other jurisdictions.¹⁴ In order to illustrate the trend of current legal thinking regarding admission standards, reference will frequently be made to the recommendations of the American Bar Association and to the proposed Code of Recommended Standards for Bar Examiners.¹⁵ The proposed Code was

¹³Laws of Montana 1915, ch. 18, § 1, at 28.

¹⁴Bar admission requirements of jurisdictions other than Montana were obtained from AMERICAN BAR ASSOCIATION, 1958 REVIEW OF LEGAL EDUCATION—LAW SCHOOLS AND BAR ADMISSION REQUIREMENTS IN THE UNITED STATES 20-25, and from WEST PUBLISHING CO., RULES FOR ADMISSION TO THE BAR (1957). The A.B.A. pamphlet is accurate up to November 1, 1958. Every attempt has been made to correct the information therein to reflect subsequent rules changes.

¹⁵The entire text of the proposed Code may be found in ASSOCIATION OF AMERICAN LAW SCHOOLS, PROGRAM AND REPORTS OF COMMITTEES FOR THE 1958 ANNUAL MEETING 52-57.

approved by the National Conference of Bar Examiners and the Association of American Law Schools in 1958, and by the American Bar Association in February, 1959.¹⁶

By Examination

Pre-law College Education

Only three jurisdictions have no requirement regarding pre-law collegiate training.¹⁷ The great majority require either two or three years of pre-law work; twenty-three jurisdictions, including Montana require two years of college or its equivalent.¹⁸ Twenty-one states and the District of Columbia require three years of college.¹⁹ However, of the jurisdictions requiring three years, only two allow the substitution of an "equivalency examination."²⁰ Only four states require graduation from college as a prerequisite to law study,²¹ and two of these, Delaware and Pennsylvania, state it as merely an alternative.

Perhaps almost equally significant are the "recommended" standards. Since 1952 the ABA standard for approval of law schools has specified that such schools must require three years of acceptable college work as a condition to admission to the study of law.²² The proposed Code of Recommended Standards for Bar Examiners would also require that "each applicant . . . have . . . three full years of successful college work before beginning the study of law. . . ."²³ Both of these standards do, however, permit two years of pre-law college work if the student takes a four-year law program.

Montana's rule requiring two years of pre-law college, or its equivalent, is clearly on a par with most jurisdictions, though the decided tendency is to require three years of such work. It would, however, seem unrealistic to now impose any new standard in Montana requiring any more than three years of pre-law college, in light of the fact that only a tiny minority of jurisdictions now have such a requisite, and that such a requirement would exceed even the ABA standard.

Law Study

In the area of legal study requirements, Montana's standards are clearly less stringent than those of most jurisdictions.

Law office or correspondence school study. Twenty-five jurisdictions

¹⁶Letter from Dean George Neff Stevens, University of Washington School of Law, to the author, March 5, 1959, on file in the *Montana Law Review* office. Dean Stevens is chairman of the Association of American Law Schools Committee on Admissions to the Bar.

¹⁷Alaska, Hawaii, Wyo.

¹⁸Ark., Cal., Colo., Fla., Guam, Ind., Iowa, Me., Md., Mass., Mich., Miss., Mont., Neb., Nev., N.M., N.C., ND., Ore., R.I., Vt., W. Va.

¹⁹Ala., Ariz., Conn., D.C., Idaho, Ill., Ky., La., Minn., Mo., N.H., N.J., N.Y., Ohio, Okla., S.D., Tenn., Tex., Utah, Va., Wash., Wis.

²⁰Ala., Idaho.

²¹Del., Kan., Ohio, Pa. The requirement of graduation in Ohio will not go into effect until 1960.

²²Hervey, *Change in A.B.A. Standards*, 20 BAR EXAM. 144 (1951).

²³Note 15 *supra*, § 8 at 54.

permit law office study as a means of qualifying for the bar examination,²⁴ but only California expressly permits correspondence school study. However, most of the states and territories permitting law office study require more time than Montana does. Furthermore, thirteen of the states which sanction office study supervise it much more closely than Montana does, by requiring registration with the court or bar examiners at the time the student commences his legal studies.²⁵ Ten of these thirteen require the advance registration *only* if the projected course of study is exclusively in a law office.²⁶ This advance registration accomplishes a two-fold purpose: first, it gives the court or law examiners an opportunity to check on the progress, course of study, and character traits of the student before he reaches the stage of applying to take the bar examination; second, it gives the court an accurate index of how long the student spends in obtaining his legal training. Four states which permit law office study as an avenue of qualification impose a maximum time limit within which the study must be completed; the average maximum is six years.²⁷

Equally significant in evaluating Montana's standards are the length the study periods required by the remaining jurisdictions which sanction law office study. One jurisdiction, Guam, requires five years. Nine states require four years if the applicant qualifies only by law office training.²⁸ Eleven states require three years study by law office applicants.²⁹ Only two states other than Montana permit law office students to take the bar examination after two years study—Georgia and Mississippi. Wyoming permits a two-year law office student to take the bar examination also, but only if he has also completed one year of law school. Hence it would appear that Montana is definitely below the standard of even the other jurisdictions which sanction law office study, in allowing applicants with only two years law office study to take the examination.

The majority of American jurisdictions—twenty-eight—do not allow law office study at all as a means of qualifying for the bar examination.³⁰ There can be no doubt that the trend is to eliminate law office study as a means of qualification. During the last twenty-five years, apparently only one authority has written in favor of law office study as a satisfactory type of legal education.³¹ That author, writing in 1936 as Secretary of the Connecticut Bar Examining Committee, argued in support of retaining law office study, but admitted that Connecticut had found that type of study

²⁴Ark., Cal., Del., Ga., Guam, Idaho, Ill., Kan., La., Mass., Me., Miss., Mont., N.C., N.D., N.H., N.Y., Pa., R.I., S.C., Tex., Va., Vt., Wash., Wyo. Only Wyoming requires that the law office study be in conjunction with some law school study.

²⁵Cal., Del., Idaho, Kan., La., Mass., N.C., N.D., N.Y., R.I., Tex., Vt., Va.

²⁶Ark., Idaho, Kan., La., Mass., N.D., N.Y., R.I., Vt., Va. Section 11 of the proposed Code, note 15 *supra*, at 51, would also require advance registration.

²⁷Idaho, 5 years; N.C., Tex., Wash., 6 years.

²⁸Ark., Cal., Idaho, Ill., N.Y., Pa., R.I., Vt., Wash.

²⁹Del., Kan., La., Me., Mass., N.H., N.C., N.D., S.C., Tex., Va.

³⁰Ala., Alaska, Ariz., Colo., Conn., D.C., Fla., Hawaii, Ind., Iowa, Ky., Md., Mich., Minn., Mo., Neb., Nev., N.M., Ohio, Okla., Ore., P.R., S.D., Tenn., Utah, V.I., W. Va., Wis. Alaska rules on this point were changed in 1955, so that state still permits law office qualification by students whose legal clerkships were begun prior to the effective date of the new law.

³¹Boardman, *Office Study Requirements in Connecticut and Their Enforcement*, 8 AM. LAW. S. REV. 622 (1936).

unsatisfactory when not carefully supervised.²³ He further admitted that "the superiority of law school instruction over law office instruction, at least as far as success in passing the bar examination is concerned, is immediately apparent."²⁴ Connecticut has since entirely abandoned the law office study system, and now requires law school graduation as an absolute prerequisite to taking the bar examination.

The only recent article on law office study, written by the Dean of St. Johns Law School, urged abolition of the New York rule allowing such training, in the following words:²⁵

In view of (1) the exceedingly small number of applicants for the bar examination who are not law school graduates, (2) the impossibility of giving adequate official supervision to their education, and (3) the unsatisfactory results of that education, it would seem that the time has come to reconsider the policy of continuing to permit such haphazard preparation for the legal profession.

The proposed Code of Recommended Standards for Bar Examiners takes probably the most positive position on what type of legal training should be required.²⁶ It provides, "Each applicant should be required to graduate from a law school approved by the American Bar Association before being eligible to take a bar examination. None of the following should be substituted for law school training:

- a. private study, correspondence school or law office training;
- b. age or experience;
- c. waived or lowered standards of legal training for particular groups or persons."

The ABA recommendations regarding legal training oppose any type of legal education obtained wholly outside a law school.²⁷

Illustrative of the trend against law office qualification is the fact that recent rules changes adopted in Alaska, South Carolina and South Dakota abolished the previous authorizations of law office study as an avenue to qualification for the bar examination.²⁸

Perhaps the most relevant consideration for Montana lawyers, however, is the experience of the Montana State Board of Law Examiners regarding the relative performance of law office and correspondence school students. In reply to a query on this point, Mr. Ralph J. Anderson, Chairman of the Board of Law Examiners, stated he believes that a "graduate of a law school of standing has about a three to one better chance of passing the examination than a graduate of La Salle or a student in a law office.

²³*Id.* at 623.

²⁴*Id.* at 625.

²⁵Tinnelly, *Further Comments on Law Office Study*, 4 BROOKL. BAR 142, 146 (1953).

²⁶Note 15 *supra*, § 9 at 54.

²⁷AMERICAN BAR ASSOCIATION, 1958 REVIEW OF LEGAL EDUCATION—LAW SCHOOLS AND BAR ADMISSION REQUIREMENTS IN THE UNITED STATES 20.

²⁸*New Rules in South Carolina*, 26 BAR EXAM. 129 (1957); *New Rules in South Dakota*, 26 BAR EXAM. 91 (1957); *New Rules in Alaska*, 25 BAR EXAM. 2 (1956).

However, . . . we do have graduates of La Salle who pass a very creditable examination and I recall one doing so on an examination when two graduates of Harvard failed the same examination."³³

From these illustrations it would appear that Montana standards permitting law office and correspondence school qualifications for the bar examination are substantially below almost all other jurisdictions, and are definitely not in keeping with the current trends.

Law School Training. Montana's standard requiring diligent study of the law for "at least two successive years (twenty-four months)" is most deficient when compared with the requirements of other jurisdictions regarding resident law school study. One state—Wisconsin—requires four years of resident law school. Twenty-three jurisdictions require a law degree as an absolute requisite, though the degree is almost always obtained in three years.³⁴ Three jurisdictions require three years of law school of all applicants, but do not require the degree.³⁵

Fourteen states and Guam have rules authorizing legal education qualification by a law degree, as an alternative to qualifications by three years of law school or a specified amount of time of office study.³⁶ Eleven states allow applicants with three years of law school to take the bar examination; but this again is but an alternative to qualification by office study in all of them except Indiana.³⁷

Only Georgia and Montana allow an applicant with only two years of law school to qualify to take the bar examination.

The ABA standards recommend that all applicants be required to have completed three years of full-time law school study.³⁸ The proposed Code for bar examiners would demand that eligibility to take the bar examination be limited to graduates of ABA-approved law schools.³⁹

Of the jurisdictions specifying some amount of law school work, forty-three require that the school be either ABA or state approved. Thirty require ABA (or Association of American Law Schools) approval;⁴⁰ the other thirteen apparently require only state approval, though some of the rules are ambiguous as to exactly what body must grant the approval.⁴¹

The failure of the Montana rules to require approval, either state or

³³Letter from Mr. Ralph J. Anderson to the author, March 9, 1959, on file in the *Montana Law Review* office.

³⁴Alaska, Ariz., Colo., Conn., Fla., Hawaii, Iowa, Ky., Md., Mich., Minn., Neb., Nev., N.J., N.M., Ohio, Okla., Ore., P.R., S.D., Tenn., Utah, V.I.

³⁵D.C., Mo., W. Va.

³⁶Cal., Del., Guam, Idaho, Ill., Ind., Kan., Mass., Miss., N.H., N.Y., Pa., R.I., Va., Wash.

³⁷Cal., Del., Ind., La., Me., N.C., N.D., S.C., Tex., Vt., Wyo. As to Wyoming, see note 24 *supra*. Only California also permits substitution of correspondence study.

³⁸Note 36 *supra*.

³⁹Note 35 *supra*, and accompanying text.

⁴⁰Alaska, Ariz., Del., Fla., Guam, Hawaii, Idaho, Ill., Ind., Kan., Ky., La., Mich., Minn., Miss., Mo., Neb., Nev., N.H., N.J., N.M., Ohio, Okla., Pa., P.R., S.D., Tex., Va., W. Va., Wis. However, Minnesota and Mississippi both allow an exception for a single specified school within the state, which is approved by the state. The Minnesota school has been approved by the ABA since its consolidation into the William Mitchell College of Law. The Mississippi school—Jackson School of Law—is still on the "not approved" list. See note 36 *supra*, at 10, 17.

⁴¹Ark., Cal., Colo., Conn., D.C., Me., Md., N.Y., N.C., Ore., R.I., Wash., Wyo.

ABA, of a law school in order to have the credits it grants acceptable as proof of legal education, leaves this state in a small minority position. The statistics noted below, under the heading "Relative Performance of Applicants on the Montana Bar Examination," show conclusively that graduates of non-approved law schools do consistently poorer on the bar examination than do graduates of approved law schools.

Moral Character Requirements. Of all the facets of the legal profession, the moral character of its members has been the factor most discussed by those interested in preservation of the honor and dignity of this ancient profession. It is undoubtedly the factor most responsible for the recent decline in the popular status of the profession. The fundamental canon in this area was laid down half a century ago by the Supreme Court of South Carolina in these words: "The three main requisites [of a lawyer] are learning, diligence, integrity; but the greatest of these is integrity."⁴⁷

The absolute necessity of uniformly good moral character among attorneys is self-evident in light of (1) the trust and confidence of their clients, (2) the fact that the bar furnishes a large measure of both moral and political leadership in the community, and (3) the fact that the members of the bar are the source of judges, legislators, and executive officers.⁴⁸

In nineteen jurisdictions, including Montana, the only character inquiry made in all cases is satisfied by the submission of affidavits or certificates of good character, usually executed by attorneys of the examining jurisdiction.⁴⁹ The number of affidavits required varies from two to five, but the average is three, as the Montana rules prescribe. Five jurisdictions run routine character investigations on all or most applicants.⁵⁰ Three states require a good character certificate from the applicant's law school;⁵¹ four other states require that the character certificate be executed by a supervising attorney, local county board, or county court.⁵²

Nineteen jurisdictions *apparently* do not require either character affidavits or investigations of regular examinees.⁵³ It is, of course, possible that some or all of these states and possessions do have some sort of character evaluation requirements.

However, in keeping with the current trend emphasizing character investigation, nine states require that all examinees be fingerprinted.⁵⁴

⁴⁷*In re Duncan*, 64 S.C. 461, 482, 42 S.E. 433, 440 (1902). See also *Ex parte Garland*, 71 U.S. (4 Wall.) 333, 378 (1867); *In re Lavine*, 2 Cal. 2d 324, 41 P.2d 161, 162 (1935).

⁴⁸Comment, 2 U.C.L.A.L. Rev. 224 (1955).

⁴⁹Ala., Colo., Conn., Ga., Hawaii, Idaho, Ill., Kan., Mass., Miss., Mo., Mont., Neb., N.M., N.Y., Okla., Ore., P.R., Utah.

⁵⁰D.C., Md., Mich., Miss. (required only of applicants who have not been residents of the state for 5 years), Mo.

⁵¹Ind., Ky., Wis.

⁵²Preceptor's certificate: Del., R.I.; local county law board's approval: Pa.; certificate from county court: Tenn. (The "preceptor" is the attorney in whose office a student performs a legal clerkship. Five jurisdictions—Del., N.J., Pa., R.I., Vt.—require all examinees to perform an office clerkship, over and above graduation from law school or other legal training, as a prerequisite to admission. All except N.J. require 6 months; N.J. prescribes 9 months.)

⁵³Alaska, Ark., Guam, Iowa, La., Me., Minn., N.H., N.C., N.D., S.C., S.D., Tex., Vt., V.I., Va., Wash., W. Va., Wyo.

⁵⁴Ariz., Cal., Fla., Idaho, Mich., Mo., Nev., N.J., Ohio.

The fingerprints are usually checked with the police department of the applicant's home town, and with the FBI central fingerprint files. Those states which require fingerprinting feel that it serves two functions: (1) it catches "hidden" criminal records and acts as a check against the applicant's own certifications regarding his prior record, and (2) it acts as a deterrent, so that persons having criminal records are discouraged from ever applying for examination in those states.⁶⁵ In Michigan, for example, the first fingerprinting check showed that almost seven per cent of the applicants had fingerprint records; the next bar examination group, however, yielded only slightly more than two per cent with fingerprint records.⁶⁶

An area like Montana probably would not yield a fingerprint record rate which would compare with those found in the heavily-populated metropolitan areas of California, Florida, or Michigan. Nonetheless, the opinion of the Director of the National Conference of Bar Examiners, based on experience obtained in character investigations since 1936, is that there is a nationwide need for more comprehensive character inquiries on applicants initially taking the bar examination, as well as on attorneys who have previously been admitted in other jurisdictions.⁶⁷ That author also points out that a criminal record may be well established long before an individual graduates from law school,⁶⁸ because

The F.B.I. Uniform Crime Reports show that persons under twenty-five were responsible for 75 per cent of the arrests for burglary, 60 per cent of the arrests for theft, 80 per cent for auto thefts, and over 40 per cent for violations of the Narcotic Drug Laws.

The thought of requiring fingerprinting of all bar examination applicants may seem shocking to a militant civil libertarian, because it smacks of an invasion of personal privacy and to some may carry an imputation of dishonesty. However, the report on Michigan's experience with fingerprinting was made after the program had been in operation there for two years, and up to that time not a single applicant had protested the taking of his fingerprints.⁶⁹ It would also seem that the mere requirement of fingerprinting has now lost any imputation of dishonesty which it might once have carried. Fingerprinting is now required of anyone entering the military service, and in several states of anyone applying for a driver's license.

Such a precautionary measure as fingerprinting obviously will not reveal all those persons who may have insufficient moral stamina to withstand the temptations presented to a practicing lawyer, but that process should reveal most of those persons who have already proven themselves to be of questionable character. However, if fingerprinting were required, definite precautions should be taken to insure that no applicant who can satisfactorily explain a fingerprint record is arbitrarily denied admission.

⁶⁵Hepburn, *Fingerprinting—Two-Way Protection*, 25 BAR EXAM. 17-20 (1956).

⁶⁶*Id.* at 18, 19.

⁶⁷Merritt, *Smokey the Bear: Guarding Law Schools and Lawyers*, 25 BAR EXAM. 101 (1956).

⁶⁸*Id.* at 103.

⁶⁹Note 55 *supra*, at 18.

Michigan has adopted a two-stage referral procedure to avoid any such arbitrariness. Under that procedure an applicant on whom an adverse fingerprint report is received is recalled for further questioning by the chairman of the character sub-committee; if the sub-committee does not unanimously approve the applicant, a special report is made to the Board of Law Examiners, and that body as a whole passes on the acceptability of the applicant.⁶⁰

An alternative or supplement to fingerprinting is a requirement that the applicant fill out and swear to a detailed and highly specific moral character questionnaire. The Montana rules require that a fairly comprehensive questionnaire be incorporated in the petition of an out-of-state attorney seeking admission on motion, but no such interrogatory is apparently required of regular examinees. The Montana State University School of Law now requires that every law student fill out a detailed character questionnaire at the time he enters law school; he must then bring it up to date at the beginning of each subsequent year of law school, and again immediately before graduation.

It would seem that the present character inquiries made by Montana of attorneys seeking admission by reciprocity, might well be extended to all regular examinees. If the questionnaire now in use by the Law School were found inappropriate for general use, the Director of the National Conference of Bar Examiners has published a suggested character questionnaire which might be acceptable.⁶¹ If such a sworn questionnaire is required, it serves at least two purposes: (1) the requirement of verification is more likely to encourage the applicant to divulge any past "record," especially if the questionnaire carries the warning that concealment of a criminal record will warrant disbarment; and (2) if a prior criminal record subsequently comes to light, the concealment itself is evidence of fraud on the part of the individual involved.

The recommendations of national agencies regarding character examination are also illuminating. The standard recommended by the National Conference of Bar Examiners would require the following:⁶²

- (1) that every potential applicant register with the court or examining authority at the time he begins his law studies;
- (2) that a local attorney be assigned as the "sponsor" of each student;
- (3) that each applicant fill out a questionnaire regarding his character, and submit it on affidavit;
- (4) that the law examiners personally interview each applicant for examination.

More recently the proposed Code of Recommended Standards for Bar Examiners has taken the very positive position that no applicant should be approved for admission to the bar until his moral character has been approved, and that the responsibility for thoroughly investigating the char-

⁶⁰Hepburn, *Character and Fitness—Not a Myth*, 34 MICH. S.B.J. 29, 30 (Feb. 1955).

⁶¹Note 57 *supra*, at 111, 112.

⁶²*Character Investigation*, 18 BAR EXAM. 89 (1949).

acter of each applicant should rest on the bar examining authority or separate committees.⁶²

If Montana does elect to change its current character requirements, care should be taken with respect to any requirement of security, loyalty, or non-Communist oaths. In the case of *Re Anastaplo*,⁶³ the Supreme Court of Illinois upheld the bar examiners' denial of admission of an applicant who swore to uphold the state and federal constitutions, but refused to answer questions regarding membership in Communist or other subversive organizations. However, in the cases of *Schwartz v. Board of Bar Examiners*,⁶⁴ and *Konigsberg v. State Bar of California*,⁶⁵ the Supreme Court of the United States reversed the state supreme courts of New Mexico and California, which had respectively upheld denial of admission of the two petitioners to the practice of law. The basis for the Court's holding in each case was that prior membership in the Communist party would not, by itself and in light of the other considerations in each of those cases, be sufficient evidence of bad moral character to sustain a denial of bar admission on that ground.⁶⁶ The Court went on to say that the state decisions upholding such exclusions were violative of the due process clause of the fourteenth amendment. The effect of these two decisions may extend into areas other than those directly involved in the cases, because the Court's opinion in the *Konigsberg* case contained this statement:⁶⁷

We recognize the importance of leaving States free to select their own bars, but it is equally important that the State not exercise this power in an arbitrary or discriminatory manner nor in such a way as to impinge on the freedom of political expression or association. A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important both to society and the bar itself that lawyers be unintimidated—free to think, speak, and act as members of an Independent Bar.

From the foregoing discussion it would appear that while Montana's requirement of good character affidavits is on a par with at least half of the other jurisdictions, this state has not elected to follow the current trend of prescribing more intensive investigation of the character of bar applicants. A report on character requirements, prepared in 1951 for the Survey of the Legal Profession, described Montana's relative status in these words:⁶⁸

Montana is an illustration of extreme informality. There is no statute and no court rule governing inquiry into the character and fitness of an applicant for admission to the bar. An applicant furnishes certificates of good character which are referred to the

⁶²Note 15 *supra*, §§ 10, 12, at 54, 55.

⁶³3 Ill. 2d 471, 121 N.E.2d 826 (1954).

⁶⁴353 U.S. 232 (1957).

⁶⁵353 U.S. 252 (1957).

⁶⁶*Schwartz* case, 353 U.S. at 246, 247; *Konigsberg* case, 353 U.S. at 267, 271.

⁶⁷353 U.S. at 273.

⁶⁸Jackson, *Character Requirements for Admission to the Bar*, 21 BAR EXAM. 115, 117 (1952).

Attorney General, "who presumably makes some inquiry." The Board of Law Examiners who pass on character are well distributed over the state and apt to have some knowledge of the applicant.

The statement of Chief Justice Harrison, noted earlier herein,⁷⁰ clearly indicates that the above-quoted report is not entirely accurate. Nonetheless, the practices of the Montana court regarding character inquiry have not been crystallized into a rule or statute; and the ordinary applicant cannot reasonably be expected to know what type of character inquiry he will have to answer, beyond the affidavits he files with his petition. It would seem that some clarification and possibly some modification of the rules on this point might well be desirable.

Reciprocity in Other Jurisdictions

Number of Years Practice Required

The Montana rule is unique in permitting attorneys admitted to practice in other jurisdictions to be admitted here on motion, after only two years of practice in their former jurisdiction. Only four other states have a less stringent requirement on this point;⁷¹ those four do not specify any length of period of practice as a prerequisite to admission by reciprocity, though all of them require some practice. The other states and possessions require periods of prior practice varying from ten to three years, the average being about five years, for admission without examination.

Four jurisdictions require ten years of prior practice.⁷² One state—Pennsylvania—prescribes eight years. New Mexico and Texas require seven years practice. The majority of all American jurisdictions—twenty-seven—require that an attorney have practiced five years in his prior jurisdictions.⁷³ Nine states require that he have practiced three years.⁷⁴

Character Investigation on Reciprocity Admissions

In 1954 the National Conference of Bar Examiners stated that forty-two states, the District of Columbia, Hawaii, and Guam used its character investigation service in determining the qualifications of out-of-state attorney applicants.⁷⁵ Our existing rules make Montana one of these states; however, the N.C.B.E. did not specify what jurisdictions used its service, nor whether all of them used it in all cases. The West digest of admission rules⁷⁶ only indicates nine jurisdictions as requiring an N.B.C.E. report of investigation in all cases,⁷⁷ although a great many more states undoubtedly

⁷⁰See text accompanying note 10 *supra*.

⁷¹Alaska, Ill., Nev., N.Y. (All the statistics on reciprocity are taken from the West publication, note 14 *supra*.)

⁷²Fla., Hawaii, La., R.I.

⁷³Ariz., Conn., D.C., Ga., Ind., Iowa, Kan., Ky., Md., Mass., Minn., Miss., Mo., Neb., N.H., N.C., N.D., Ohio, Okla., P.R., S.C., S.D., Tenn., V.I., W.Va., Wis., Wyo.

⁷⁴Ark., Colo., Del., Me., Mich., Ore., Utah, Vt., Va.

⁷⁵*Mississippi Rolls Along*, 23 BAR EXAM. 122 (1954).

⁷⁶Note 14 *supra*.

⁷⁷D.C., Mass., Mich., Miss., Mo., N.Y., Ohio, Okla., Tenn.

have the same requirement. Five states and Guam require a character investigation of an unspecified nature.⁷⁸

The proposed Code for bar examiners urges that "Each state should use the investigating services of the National Conference of Bar Examiners in checking the character of an attorney-applicant seeking admission to practice."⁷⁹

Any change in Montana's rules on this phase of admissions would seem to be unnecessary.

Good Standing in State of Prior Practice

The great majority of American jurisdictions—thirty-five—require that an attorney applying for admission on motion give proof of good standing in his former state of practice, as of the time he left that jurisdiction.⁸⁰ Ordinarily the proof must take the form of a certificate from an attorney of the former jurisdiction, the secretary of the bar association, a judge before whom the applicant has practiced, a clerk of court, or a judge of the state's highest court. The Montana rule requiring a certificate of good reputation and trustworthiness, executed by the presiding judge of the highest state court of the applicant's former jurisdiction, is a commendable standard and should require no revision.⁸¹

Jurisdictions Requiring Examination of All Attorney-Applicants

Five jurisdictions—Alabama, California, Guam, Idaho, and Washington—require that all attorneys take an examination before being admitted. These jurisdictions have entirely abandoned reciprocal admission on motion. In Alabama and Guam out-of-state attorneys take the same examination required of other applicants. In California, on the other hand, there is a separate examination for experienced practitioners, which is apparently different from that given the other examinees.

Three of the states requiring examination of experienced practitioners also prescribe a set amount of previous practice. California requires four years practice, while Idaho and Washington each require five years.

Alabama and Kentucky require that any attorney seeking admission be a law school graduate.

IS A NATIONAL OR UNIFORM BAR EXAMINATION THE SOLUTION?

For a number of years the National Conference of Bar Examiners, as well as a number of leading practitioners in various states, have urged that the legal profession adopt a uniform, national bar examination. So far, the idea has not gained much acceptance by the individual states. One proponent has characterized the slow acceptance of the idea this way: "the

⁷⁸Iowa, N.H., S.D., Wash. Wyo.

⁷⁹Note 15 *supra*, § 12, at 54, 55.

⁸⁰Alaska, Ark., Colo., Fla., Ga., Idaho, Ill., Ind., Iowa, Me., Md., Mich., Minn., Mo., Nev., N.H., N.J., N.Y., N.C., N.D., Ohio, Okla., Ore., P.R., R.I., S.C., S.D., Tenn., Tex., Utah, V.I., Va., Wash., W. Va., Wyo.

⁸¹Rule XXV C 2, 127 Mont. lli (1954).

show first went into rehearsal some twenty years ago, and we haven't yet got it on the road.'⁸²

The leading article in support of a national bar examination appeared in 1950.⁸³ It was an official report to the council which administered the national Survey of the Legal Profession. The author argued that four factors made a uniform, national examination both desirable and necessary.⁸⁴

(1) No uniformity exists in the *quality* of bar examinations given in the different examining and admitting jurisdictions.

(2) There is very little uniformity to be found in the *quality* of bar examinations given *within the same examining and admitting jurisdiction*.

(3) No uniformity whatsoever appears in the standard of grading answers in the different examining and admitting jurisdictions.

(4) As traditionally and currently set, the typical bar examination is not an accurate test of the training that has been and is being offered by the better law schools of the country. . . . Together, [these objections] . . . are so serious that one cannot reasonably look forward to their eradication so long as bar examinations are formulated and the answers read and graded by each of [the] . . . examining jurisdictions.

Opposition to a national bar examination is undoubtedly based primarily on the feeling that the examination should, to at least some extent, test the applicant's knowledge of the local state law. Yet "the American Bar Association Section on Legal Education and Admissions to the Bar has been trying to get the law schools away from the teaching of local law and towards a national approach."⁸⁵ In this same vein, the proposed Code for bar examiners provides in part that "questions should not be designed to require answers based upon local case or statutory law. However, subjects of substantial local importance may be included."⁸⁶ A survey of the scope and content of bar examinations in 1953, however, indicated that a gradual shift is taking place, toward testing primarily on questions of national scope and avoiding coverage of local law except on practice and procedure. The survey showed that only eight states asked questions involving local law on all examination subjects. Twenty-three states indicated they regularly asked questions involving the local law on civil procedure; a few of these jurisdictions also asked local-law questions on other subjects. Eight states said that even where questions of local law were involved, they gave credit for well reasoned answers, even though the answers might be

⁸²Dean Johnston of Denver, quoted in Glenn, *A National Conference of Bar Examiners' Service*, 22 BAR EXAM. 24, 25 (1953).

⁸³Clark, *Bar Examinations: Should They Be Nationally Administered*, 36 A.B.A.J. 986 (1950), and SURVEY OF THE LEGAL PROFESSION, BAR EXAMINATIONS AND REQUIREMENTS FOR ADMISSION TO THE BAR 439, 453 (1952).

⁸⁴36 A.B.A.J. at 1054.

⁸⁵Stevens in Panel Discussion, *A Uniform Bar Examination*, 22 BAR EXAM. 4, 8 (1953).

⁸⁶Note 15 *supra*, § 18, at 55.

wrong or neglect any mention of the local law. Nine states attempted to avoid local-law questions in any area."⁸⁷

Other professions such as medicine, dentistry and accounting, have successfully utilized a national examination. Such examinations are not accepted in all states, but are accepted entirely or in part by a substantial number of jurisdictions. As of 1950, a certificate from the National Board of Medical Examiners was accepted as proof of professional competency in all but seven states and two possessions; the uniform examination of the American Institute of Accountants was accepted in all but two states.⁸⁸

There is admittedly a greater variation in the jurisprudence of the states than there is in their respective medical and accounting practices. Nonetheless, a move toward a greater standardization of the subject matter, quality, and grading of bar examinations would seem to be in keeping with two other trends of the law toward greater standardization: (1) the ever-increasing state adoption of acts promulgated by the National Conference of Commissioners on Uniform State Laws, and (2) the trend toward standardization of state procedure through adoption of the Federal Rules.

Illustrative of the trend of legal thinking on this point is the fact that in 1940 the Committee on Cooperation with Bench and Bar, Association of American Law Schools, recommended that the Association "go on record in favor of a National Bar Examination." The recommendation was accepted by the member law schools by a vote of 50 to 21.⁸⁹

Operation of the National Question Pool

If a majority of the states ultimately prove unwilling to accept a standard, national bar examination, there is still a second factor which can and should work toward greater uniformity. In 1953 the National Conference of Bar Examiners instituted a pooling system for bar examination questions and answers. It is administered by the Bar Examination Service Committee. The gist of the arrangement is that the committee collects questions and answers on various subjects from both the bar examiners and the law schools in the respective states. It then publishes a catalog of the available questions, giving a brief digest of each. The bar examiners of any jurisdiction may select from the digest questions which they desire to use, and the complete question, including answer, is sent to them.

As of August, 1957, forty-six jurisdictions had drawn a total of some 2950 questions from the pool, and twenty-five states and territories had submitted questions. At that time, Montana had drawn questions from the pool once, but had not contributed to it.⁹⁰

It would seem that Montana can benefit materially from continued

⁸⁷Note 85 *supra*, at 8, 9.

⁸⁸Note 83 *supra*, at 1054.

⁸⁹Committee Report, submitted as an Appendix to a panel discussion on standards for bar examiners, 26 BAR EXAM. 125, 128 (1957).

⁹⁰*Progress of Bar Examination Service Committee*, 27 BAR EXAM. 37-41 (1958). See also Godfrey, *Bar Examination Service Committee 1955 Report*, 24 BAR EXAM. 135-137 (1955).

participation in this national pool. However, inasmuch as the pool is a reciprocal arrangement, dependent on its users for replenishment, it would also seem that Montana should make contributions commensurate with the extent to which it uses the central source.

HOW RELIABLE IS A BAR EXAMINATION IN TESTING LEGAL KNOWLEDGE?

It is rather amazing to find that not very much is known about the real accuracy of bar examinations in testing legal knowledge. This fact was frankly admitted in a 1956 speech by the President of the New York State Board of Law Examiners in these words:⁸¹ "Is it not strange that we examiners from all over the United States know very little about what we are doing? We do not know whether our grades are reliable or whether we are doing a good job, a bad job, or an indifferent job. It would seem that in this age of research, bar examining is still in the horse-and-buggy stage."

However, a few studies have been done in this area, and all of them so far indicate a reasonably good correlation between the law school records of examinees and their performance on the bar examination. Illinois did such a study, involving eight law schools, for the five-year period between 1929 and 1933. The results showed that "to an amazing degree the success of a candidate for the bar was forecast by his law school record."⁸² More recently the dean of an Illinois law school has said that his school consistently finds a 70% correlation between law school grades and bar examination results.⁸³

As of 1956 only six states had made systematic appraisals of their bar examinations. California and New York have done statistical studies on their examinations for several years.⁸⁴ Statistics released by New York for its July, 1951, bar examination showed an average correlation of almost 70% on substantive law questions; the average was slightly lower on questions involving adjective law, and in both cases the index varied from school to school. This was considered an "excellent correlation."⁸⁵

Of course the law school record itself is not necessarily an accurate measure of an individual's legal knowledge and ability, but it is the best available indicium.

Free Evaluation Service for Bar Examinations

At present the National Conference of Bar Examiners "is prepared to furnish, without cost, a study and analysis of the performance of the examination in any state which would like to participate in this pro-

⁸¹DeGraff, *Bar Examination Grades—Are They Reliable?*, 25 BAR EXAM. 7, 8 (1956).

⁸²Garman, *Correlation of Law School Records and Bar Examination Results*, 8 AM. LAW S. REV. 943, 944 (1937).

⁸³Fitzgerald, *Examinations for Law Schools and for the Bar: A Comparison*, 26 BAR EXAM. 41, 44 (1957).

⁸⁴Note 91 *supra*, at 8.

⁸⁵Nadell, *Publication of Bar Examination Statistics*, 22 BAR EXAM. 48, 53, 54 (1953).

gram."⁹⁸ This evaluation service is operated by the Bar Examination Service Committee, which also administers the national question pool. As of 1956 the bar examinations of four states had been statistically evaluated. The analyses showed that "in these four states, both large and small, the examination performs very well and correlates satisfactorily with law school averages."⁹⁹

Most bar examiners would probably agree with the position taken by Dean Stevens of the University of Washington School of Law; he feels that while bar examinations admittedly are not perfect, they are the best testing vehicles available and should be continued. Dean Stevens believes that the continued high attrition rate on bar examinations is justified, on the theory that the examination approximates problems encountered in actual practice, both as to massiveness of the problems presented, and their timing; i.e., the encountering of the problems long after the individual has studied the particular area in law school.¹⁰⁰

However, in light of the fact that the bar examinations are undoubtedly here to stay, it would seem that every effort should be made to make them as accurate a reflection as possible of the legal knowledge and reasoning power of the examinees. Montana apparently has not yet taken advantage of the free N.C.B.E. evaluation service. Although the small number of examinees would limit its accuracy, perhaps such an evaluation would be one step toward an improved Montana bar examination.

THE MONTANA BAR EXAMINATION

Procedural Operation

Examiners

The present Montana State Board of Law Examiners consists of Ralph J. Anderson, Helena, Chairman; Ralph G. Wiggenhorn, Billings; H. Cleveland Hall, Great Falls; Howard A. Johnson, Butte; and Russell E. Smith, Missoula. Mr. Edward C. Mulroney, Missoula, was a Board member until April 1, 1959.

The Board's membership remains quite stable, inasmuch as members are replaced only upon resignation. The present chairman, for example, has been on the Board since 1943 and has been chairman since 1950. He is a former Associate Justice of the Supreme Court of Montana.

Members of the Board are appointed by the Supreme Court, in accordance with the discretion lodged in the court by statute.¹⁰¹ The statute gives the court an option as to whether it will require the assistance of the examiners. However, the court has apparently conducted the examination itself on only one occasion.¹⁰² Men appointed to the Board have uniformly been from among Montana's most eminent and respected practitioners.

⁹⁸DeGraff, *Testing the Effectiveness of the Program*, 23 BAR EXAM. 13, 14 (1954).

⁹⁹Note 91 *supra*, at 8.

¹⁰⁰Stevens, *Are Bar Examinations Unrealistic?*, 26 BAR EXAM. 58 (1957).

¹⁰¹R.C.M. 1947, § 93-2013.

¹⁰²Metcalfe, *A Survey on Admission to Practice Law in Montana*, 13 MONT. L. REV. 1 (1952), especially at n.1.

Board members are paid \$20.00 per day plus travel expenses for the annual three-day examination, but receive no compensation for preparation of questions and other duties.¹⁰¹ Hence Board membership is, to a high degree, an honorary and gratuitous service. Unless and until more funds and/or more assistance is provided to the examiners, the bar cannot expect them to assume the burden of any additional duties, such as time-consuming character investigations. Perhaps part of the burden of some of the additional activities which may be necessary to make Montana's standards conform with those of other states could be borne by committees of the bar association.

Questions

Examination questions are prepared by each of the members of the Board. Proposed questions are then circulated among the entire membership for comment, and when agreed upon are submitted to the chairman. He makes the final selection of the questions which will appear on the examination. Each question submitted is answered by the submitting member, and the answer substantiated by case or other legal authority. All questions are rewritten each year, so that successive examinations never contain duplicate questions.

The questions are hypothetical essay problems, designed to test the applicant's reasoning power. No "yes" or "no" questions are used. (Contrary to general supposition as to their effectiveness, New York has been using about three hundred "yes-no" questions on each examination, and has found better correlation with law school averages than is reflected by essay questions.)¹⁰²

Montana does occasionally ask definitional questions, but the use of such questions is apparently rare.

Administration of the Examination

The examination is administered in the Capitol building, and is supervised throughout by a representative of the Supreme Court. Typewriting is allowed.

Time

The Montana examination is administered over a three-day period. A table published in 1952 in a volume on bar examinations prepared for The Survey of the Legal Profession showed that Montana ordinarily asked about 100 questions, and allowed an average of nine minutes per question.¹⁰³ Only two other jurisdictions—Arizona and Arkansas—average such periods of time per bar examination essay question.

¹⁰¹Information as to the current rate of compensation was obtained from Mr. E. C. Mulroney. R.C.M. 1947, § 93-2014 provides for the examiners' compensation. All information regarding the examination procedure was verified by both Mr. Mulroney and the chairman, Mr. Ralph J. Anderson.

¹⁰²DeGraff in General Discussion following the article cited in note 96 *supra*, 23 BAR EXAM. 16, 19 (1954).

¹⁰³SURVEY OF THE LEGAL PROFESSION, BAR EXAMINATIONS AND REQUIREMENTS FOR ADMISSION TO THE BAR 376, 377 (1952).

Grading

Examinations are graded on a one-to-ten numerical basis. Papers are identified only by number, so the Board members never know the identity of any author of an examination paper until after the grading is completed and the grades recorded.

Preliminary Qualifications

The Board of Law Examiners is not presently responsible for determining the preliminary qualifications of the applicants. That function is handled by the Supreme Court itself; the list of applicants qualified to take the examination is certified to the examiners by the court. Hence the Board does not impose any moral character standards, or conduct any investigations of applicants. As previously noted herein, the proposed Code for bar examiners advocates a change in this situation, so as to charge the examining authority with both investigations of character and ultimate determinations of fitness.¹⁰⁴ The Code also seemingly advocates that the examiners determine the pre-legal qualifications of the applicants.¹⁰⁵ However, it apparently contemplates that if the examiners bore all these responsibilities they would be considerably assisted by the state bar association or special committees. The Code does not seem to advocate any shift from the idea that the examiners are agents of the Supreme Court, and carry out their responsibilities in the court's name.

The Code does, however, suggest three additional items which would be new for Montana:

(1) Require all students who intend to ultimately take the Montana bar to register with the examining authority at the beginning of their law study.¹⁰⁶ This would allow the examiners some information on and control over the length of time within which the applicants complete their legal studies.

(2) Publish the results of each examination, showing the success of applicants according to pre-legal education, type of law training, whether they were law school graduates, and whether the law schools they attended were approved by the ABA.¹⁰⁷

(3) Conduct periodic studies to determine the effectiveness of the bar examination, to discover defects and to suggest improvements.¹⁰⁸ Such studies could be conducted by the state itself, as in California and New York; or they could be evaluations by the Bar Examination Service Committee.

¹⁰⁴Note 63 *supra*, and accompanying text.

¹⁰⁵ASSOCIATION OF AMERICAN LAW SCHOOLS, PROGRAM AND REPORTS OF COMMITTEES FOR THE 1958 ANNUAL MEETING 52, 54.

¹⁰⁶Note 105 *supra*, § 11, at 54.

¹⁰⁷Note 105 *supra*, § 25, at 56.

¹⁰⁸Note 105 *supra*, § 26, at 57.

*Relative Past Performance of Applicants on the
Montana Bar Examination*

1936 to 1951

The Honorable Lee Metcalf, writing in the 1952 Montana Law Review in his then capacity of Associate Justice of the Supreme Court of Montana, exhaustively analyzed and compared the performance of Montana bar examinees with their respective extent and type of training, both legal and pre-legal. His article contained tables of statistics for first, second, third and fourth attempts at the bar examination.¹⁰⁰

During the fifteen-year period covered by these statistics, only 298 persons took the bar examination. When that group is broken down into the twenty categories of training which Mr. Justice Metcalf used to evaluate relative performance, some of the categories contain so few persons that percentages are not very meaningful. But with this limitation in mind, his statistics, converted to passing percentages, seem to establish several fairly reliable conclusions:

- (1) That applicants qualifying with a degree from an ABA-approved law school consistently performed better than any other group;
- (2) That the next best were those applicants who had studied two or more years in an ABA-approved law school.
- (3) That the next in line, and so closely parallel as to offer no valid distinction, were most of the law office students and the correspondence school students;
- (4) That those groups who consistently did the poorest on the examination were:
 - (a) holders of degrees from non-approved law schools, and
 - (b) those law office and correspondence school students who relied on an "equivalency" test to fulfill their pre-law study requirements.

These conclusions are buttressed by the previously cited opinion of the present Chairman of the Montana State Board of Law Examiners that graduates of "a law school of standing" have about a three to one better chance of passing the examination than a correspondence school graduate or a law office student.¹⁰⁰

1952 to 1957

No statistics comparable to those compiled by Mr. Justice Metcalf for the period up to 1951 are apparently currently available. However, his statistics are recent enough that current statistics would very likely be closely comparable.

Performance on the Montana bar examination from 1952 through 1957, broken down into groups taking the examination for the first time and

¹⁰⁰Note 100 *supra*, at 5, 7, 8.

¹⁰⁰Note 38 *supra*, and accompanying text.

groups of repeaters, and compared with the national average performance, is shown on the following table:¹¹¹

| Year | 1st timers passing | | repeaters passing | | Mont. avg. | National passing average |
|------|--------------------|----------|-------------------|----------|------------|--------------------------|
| | number | per cent | number | per cent | | |
| 1952 | 11 | 64% | 7 | 57% | 61% | 59% |
| 1953 | 16 | 69% | 3 | 0% | 58% | 60% |
| 1954 | 11 | 56% | 2 | 0% | 46% | 56% |
| 1955 | 11 | 64% | 5 | 40% | 56% | 59% |
| 1956 | 12 | 83% | 4 | 50% | 75% | 59% |
| 1957 | 13 | 54% | 5 | 40% | 50% | 61% |

Admissions on Motion

During the years 1953 through 1957, seventeen out-of-state attorneys were admitted to the Montana bar on motion. The break-down by years is as follows: 1953, eight; 1954, one; 1955, four; 1956, two, and 1957, two.¹¹²

SHOULD THE DIPLOMA PRIVILEGE FOR MONTANA STATE UNIVERSITY LAW GRADUATES BE RETAINED?

As previously indicated, since 1915 graduates of the Montana State University School of Law have been admitted on motion, without examination. This privilege has always been subject to the right of the Chief Justice to require examination, but that power has apparently never been exercised.

Factors Opposing Retention of the Privilege

"The American Bar Association is of the opinion that graduation from a law school should not confer the right of admission to the bar, and that every candidate should be subject to an examination by public authority to determine fitness."¹¹³ The proposed Code of Recommended Standards for Bar Examiners also takes the position that no one should be admitted without examination unless he has previously been admitted to the Bar of "another American or common-law jurisdiction."¹¹⁴ The ABA has been consistent in its opposition since 1892.¹¹⁵ In 1940 a committee of the Association of American Law Schools recommended that the diploma privilege be discouraged, but the Association itself has apparently never approved this particular recommendation.¹¹⁶

¹¹¹From tables published by the National Conference of Bar Examiners: 1952, 22 BAR EXAM. 122-125 (1953); 1953, 23 BAR EXAM. 148-150 (1954); 1954, 24 BAR EXAM. 113-115 (1955); 1955, 25 BAR EXAM. 114-117 (1956); 1956, 27 BAR EXAM. 42-45 (1958); 1957, 27 BAR EXAM. 94-97 (1958).

¹¹²Tables published in 27 BAR EXAM. 46-47, 98-99 (1958).

¹¹³*Standards of the American Bar Association*, RULES FOR ADMISSION TO THE BAR 7 (West 1957). See also note 103 *supra*, at 103.

¹¹⁴Note 105 *supra*, § 14, at 55.

¹¹⁵SURVEY OF THE LEGAL PROFESSION, BAR EXAMINATIONS AND REQUIREMENTS FOR ADMISSION TO THE BAR 103 (1952).

¹¹⁶*Ibid.*

There is no doubt that the enforced comprehensive review attendant on a bar examination has beneficial effects. Further, requiring Montana law graduates to take the bar examination would increase the percentage of law graduates taking the examination, and thereby increase the competition against examinees who had not attended or graduated from approved law schools. This increased competition might indirectly raise admission standards.

Two jurisdictions—Florida and South Dakota—have abandoned the diploma privilege in recent rules changes. Florida repealed its diploma privilege statute in 1951 at the instance of the state bar association.¹¹⁷ The reasons for doing so, according to the Chairman of the Florida State Board of Law Examiners, were as follows:¹¹⁸

Florida is such an attractive place in which to live that many out of state students attend our schools. The diploma privilege brought an inordinate number of these students. Some were undesirable but they were permitted to attend and graduate from law school. Under the diploma privilege the applicant was required to satisfy the board with regard to his moral fitness. But in this respect the examiners were severely handicapped because the applicant was a graduate of an approved law school and in doubtful cases the tendency was toward granting a license. Another evil of the diploma privilege was its effect upon the quality of work in the law schools. To some extent there was removed from the law schools and the professors the force and advantage of competition.

South Dakota abandoned the diploma privilege in its rules change of 1957,¹¹⁹ but this author has been unable to discover what specific reasons prompted that change.

Factors Favoring Montana's Retention of the Diploma Privilege

Mr. Justice Metcalf, in his 1952 law review article, felt that the diploma privilege should be retained in this state because:¹²⁰

(1) "The standards, both for pre-legal and actual law study are higher for graduates of the Montana law school than for applicants to take the bar examination."

(2) "Montana has a relatively small law school and it is the only one in the state. The Chief Justice is well acquainted with the instructors, familiar with the type of instruction given at the school, and able to determine accurately that standards are being maintained."

(3) "The Montana graduates who appear before the court measure up in training and ability as lawyers with the graduates of out-of-state schools who are practicing in the state."

(4) Between 1936 and 1951 seven students with only two years of study at the Montana law school passed the bar examination. "Two of

¹¹⁷FLA. STAT. §§ 454.03, 454.031 (1951).

¹¹⁸Watts, *Current Status of Admissions in Florida*, 23 BAR EXAM. 99, 107 (1954).

¹¹⁹*New Rules in South Dakota*, 26 BAR EXAM. 91, 92 (1957).

¹²⁰Note 100 *supra*, at 10, 11.

the seven had less than a passing average in law school." (Since 1951 at least one other student who left the Montana State University School of Law at the end of his first year with less than a passing average passed the Montana bar after a second year of study at another law school.) "Taken along with other evidence, these results indicate that a man who is able to graduate from the Montana law school is able to pass the bar examination."

Another factor bearing on evaluation of the desirability of retaining the diploma privilege is that in recent years the law school Board of Visitors, composed of outstanding judges and lawyers from throughout the state, have semi-annually evaluated the law school's policies and standards, and have done some classroom visiting. This additional check tends to insure maintainence of standards within the school.

The diploma privilege is not unique to Montana. Five other states regularly admit graduates of their own schools on motion;¹²¹ ten additional states admit their own graduates in "emergencies," or under special rules for veterans or persons entering military service.¹²²

The number of Montana law graduates admitted on motion under the diploma privilege during the years 1952 through 1957 is as follows: 1952, forty; 1953, thirty-two; 1954, twenty-five; 1955, twenty-three; 1956, sixteen; 1957, twenty-two.¹²³

Two final factors—the opinions of members of the Montana State Board of Law Examiners, and the report of the ABA inspector who evaluated the law school for accreditation in 1957—are also worthy of consideration in determining whether the diploma privilege should be continued.

Mr. Edward C. Mulroney, Missoula attorney and member of the Board of Law Examiners until April 1, 1959, has said he is satisfied that if a man can graduate from the Montana State University School of Law, he is adequately prepared to practice in Montana, and that no bar examination need be administered to graduates of this law school.¹²⁴ Mr. Ralph J. Anderson, Chairman of the Board of Law Examiners, concurred, with one reservation, in the following words:¹²⁵

As to whether graduates of the Law School should all be required to take the [bar] examination, it is my considered opinion that those who make good grades in law school should not be required to take the examination but those students who take one or two additional years to complete the course in law school should be required to take the examination.

¹²¹Ala., La., Miss., W. Va., Wis. See table in 27 BAR EXAM. 46, 47 (1958).

¹²²Cal., Colo., Ind., Kan., Minn., N.Y., Okla., Pa., Tex., Wash. See table 27 BAR EXAM. 46, 47 (1958). However, only five of these states—Ind., N.Y., Okla., Tex., Wash.—admitted graduates under these special rules in 1957. See table in 27 BAR EXAM. 98-99 (1958).

¹²³See tables in 25 BAR EXAM. 118-119 (1956) and 27 BAR EXAM. 98-99 (1958). Statistics on admissions under the diploma privilege for the years 1936 through 1951 may be found in Mr. Justice Metcalf's article, note 100 *supra*, at 9 and n.18.

¹²⁴Interview with Mr. Mulroney by the author, confirmed by Mr. Mulroney's reading this Note in its final form.

¹²⁵Letter, note 38 *supra*.

Mr. John Hervey, in his American Bar Association Inspection Report on the Montana State University School of Law,¹²⁶ said:

The school is to be commended for selective admissions. The "diploma privilege" exists in Montana for the graduates of the school and it, therefore, exacts high scholastic and moral qualifications for admission. This requirement should prove fruitful and should be continued.

In a subsequent letter he added:¹²⁷

I was especially impressed with the high standards of admission and scholarship which you maintain in the law school.

Mr. Hervey's conclusions, taken together with the views of our bar examiners, would seem to indicate that Florida's reasons for abandoning the diploma privilege¹²⁸ are not problems in Montana at present.

TRENDS OF RECENT RULES CHANGES IN OTHER JURISDICTIONS

New admission rules adopted by other states during the past eight years provide at least a partial indication of current trends in this area. The following is a brief summary of changes which were adopted by more than one jurisdiction since 1951:¹²⁹

Character Investigations of All Applicants Required

Michigan adopted this requirement in 1953; Tennessee adopted it in 1956 (including both a questionnaire and a local bar association investigation); Missouri promulgated this requisite in 1958.

All Applicants Must Submit Fingerprints

This was adopted by Michigan in 1953, Ohio in 1957, and Missouri (as an optional requirement which the examiners may impose) in 1958.

All Examinees Must Be Graduates of Law Schools Approved by the ABA or AALS

This requisite was prescribed by Alaska in 1955, by South Dakota in 1957, by South Carolina (with an exception for its own state schools) in 1958, and by Kansas, effective in 1960. The 1955 Report of the Ohio Legal

¹²⁶The Inspection Report is quoted in part in *The Dean's Report to the President*, 5 MONTANA STATE UNIVERSITY LAW SCHOOL NEWS 4 (August 1958).

¹²⁷*Ibid.*

¹²⁸Text accompanying note 118 *supra*.

¹²⁹Rules changes of the various jurisdictions are contained in the following: Hepburn, *Character and Fitness—Not a Myth*, 34 MICH. S.B.J. 29 (1955); Watts, *Current Status of Admissions in Florida*, 23 BAR EXAM. 99, 106-107 (1954); *New Rules in Alaska*, 25 BAR EXAM. 2 (1956); *Mississippi Moves*, 23 BAR EXAM. 117, 118 (1954); *Tennessee is Stressing Character*, 25 BAR EXAM. 87 (1956); *Registration Requirement in Ohio*, 26 BAR EXAM. 134 (1957); *New Rules in South Dakota*, 26 BAR EXAM. 91 (1957); *Missouri Adopts Registration Requirement for Law Students*, 27 BAR EXAM. 100 (1958); *New Rules in South Carolina*, 26 BAR EXAM. 129 (1957); *Kansas Keeps Up*, 25 BAR EXAM. 76 (1956); *Report of Ohio Legal Education Committee*, 24 BAR EXAM. 118, 128 (1955).

Education Committee also urged that the Ohio State Bar Association petition that state's supreme court to obtain adoption of the standard, but no action has apparently yet been taken to make the recommended change.

Law Office Study Abolished as a Means of Qualifying to Take the Bar Examination

This action was taken by Alaska in 1955 (except for office clerkships previously begun), by South Dakota in 1957, and by South Carolina in 1958.

Action on the Diploma Privilege

This privilege was abolished by Florida in 1951 and by South Dakota in 1957. But it was expressly preserved by Mississippi's admissions statute of 1954.

Other Significant Changes

Four other actions, each taken by only a single state, are significant. The Tennessee Bar Association's Committee on Legal Education and Admission to the Bar has twice proposed a major modification. In 1953 and again in 1955 the committee recommended that every license to practice law in Tennessee be provisional for the first five years, and lapse automatically at the end of that time if the holder of the license was not, during the five-year period, engaged in the practice of law or the rendition of legal services to a government agency, trust company, or the like.¹²⁰ The Tennessee rules apparently have not been amended to incorporate the recommendation. If adopted it would require that lawyers who had been away from practice during their first five years following admission would have to retake the examination as a condition to later reentering practice.

Another important change was made by the new 1958 rules in South Carolina. That state now precludes an examinee from taking the bar more than three times.¹²¹ As of 1957, a majority of thirty-one states imposed some sort of limitation on the number of times an applicant could take the bar examination, and one author advocated a general limit of two attempts.¹²²

South Dakota's 1957 rules change included the requirement that attorneys from out-of-state, seeking admission on motion, have practiced five years elsewhere.¹²³

Missouri in 1958 adopted a requirement that all law students who contemplate taking the bar examination of that state must register with the state supreme court within ninety days of the time they begin their law studies.¹²⁴

¹²⁰1953 *Report of Tennessee Committee*, 23 BAR EXAM. 25 (1954); *State Activities and Recommendations*, 24 BAR EXAM. 142, 145 (1955).

¹²¹*New Rules in South Carolina*, 26 BAR EXAM. 129 (1957).

¹²²Eckler, *How Many Times Should an Applicant Be Permitted to Take a Bar Examination?*, 26 BAR EXAM. 28 (1957). As of the date of this article, 18 states imposed no limit, 5 states limited an applicant to 5 tries, 12 states had a limit of 4, 13 jurisdictions imposed a 3-time limit, and one—New Hampshire—allowed only 2 examination attempts.

¹²³*New Rules in South Dakota*, 26 BAR EXAM. 91 (1957).

¹²⁴*Missouri Adopts Registration Requirement for Law Students*, 27 BAR EXAM. 100 (1958).

**WOULD ANY CHANGE OF RULES IN MONTANA
REQUIRE LEGISLATIVE ACTION?**

If it is ultimately determined that the rules for admission to the Montana bar should be changed, there is a problem as to whether such a change would have to be made by legislative enactment or whether the Supreme Court of Montana has inherent power to set the standards for admissions of attorneys, regardless of what the legislature has provided. Any change would probably involve a modification of the present standard requiring only two years of law study. That standard is established by R.C.M. 1947, section 93-2002, which provides in part that "every applicant for admission as an attorney and counselor must produce . . . a certificate of one or more reputable counselors-at-law that he has been engaged in the study of law for two successive years prior to the making of such application."

This statute becomes more significant in light of the accompanying provision of section 93-2007 that "the supreme court may establish rules for the admission of attorneys and counselors *not inconsistent with this chapter.*" (Emphasis added.)

The quoted portions of both of these statutes have remained unchanged since their original enactment in the 1895 Code of Civil Procedure. Further, the Montana Supreme Court has acquiesced in the standard set by section 93-2002 since 1896.¹²⁵

Montana Cases

A number of decisions of the Supreme Court of Montana have dealt with the source of the power to admit individuals to the practice of law. With two possible exceptions, they have uniformly indicated that the court does not consider itself as having exclusive power over admission standards. The early case in *In re Bailey*¹²⁶ stated that the practice of law was "subject entirely to state control." This impliedly recognizes legislative competence in the area. This view was stated more explicitly in *State v. Merchants' Credit Service, Inc.*, where the court said, "this court is *by statute* given the exclusive power to confer upon any persons the right to practice law. . . ." (Emphasis added.)¹²⁷ The next case decided on this point, *In re unification of the Montana Bar Assn.*, left even less doubt when it stated:¹²⁸

This court, under and within the terms of our Constitution and the statutes of this state, has the power and authority to adopt, promulgate and enforce all necessary, proper and appropriate rules for its own government and for the admission and regulation of attorneys at law in the state of Montana. This the court has done from its inception.

The most recent Montana decision dealing with this area, *Petition of Bergen*, decided in 1951, stated per curiam, "admissions to the bar of this

¹²⁵RULES OF THE SUPREME COURT OF MONTANA, 16 Mont. 587, 601 (1896), Rule XVII 1.

¹²⁶50 Mont. 365, 369, 146 Pac. 1101, 1103 (1915).

¹²⁷104 Mont. 76, 94, 66 P.2d 337, 339 (1937).

¹²⁸107 Mont. 559, 562, 87 P.2d 172, 173 (1939).

state are governed by the provisions of our codes and of rules of court promulgated by this tribunal."¹²⁹

The 1935 decision of *In re Hansen* seems at first glance to be directly contrary to the other Montana cases. It expressly approves decisions from other jurisdictions which state that:¹³⁰

[A]ttorneys are officers of the court; they may be admitted to practice only by authority of the court; and it is universally held that courts have inherent power over members of the bar *over and above statutory provisions*. . . . This power may be likened to the power of a legislative body to exercise summary powers over its membership. It is an inherent power and may be exercised under the principles of common law on the theory that it is the court's prerogative to control its own officers.

The *Hansen* case involved a disciplinary action against an attorney, so it may well be that the court intended only to affirm its inherent power to discipline its officers, without regard to its powers relating to admissions. The subsequent decision of *In re McDonald* cites the *Hansen* case for the proposition that "in any event this court has power to take action to discipline its officers."¹³¹ Hence neither of these cases was probably intended to contradict the otherwise consistent position of the court that the source of its admissions powers lies in constitutional and statutory grants.

The General Rule Elsewhere

Cases up to 1943 on the question of the power of the legislature respecting admissions to the bar are exhaustively discussed and analyzed in an annotation in 144 A.L.R. 150. The author of that discussion concludes that notwithstanding the doctrine of separation of powers, the state legislature is generally recognized as having authority under its police power to enact reasonable statutes regulating admissions of attorneys to the practice of law. However, the actual act of admission is generally recognized to be exclusively judicial, so that the state supreme court may reject an applicant on the ground of unfitness, even though he has complied with the statutory standards. In some jurisdictions, legislative enactments governing admission standards are given effect by the courts solely as a matter of comity or courtesy.

The leading western decision in this area is *Brydonjack v. State Bar of California*.¹³² It held that the legislature had power to prescribe admission standards, so long as the statutes did not materially impair the exercise of constitutional functions of the courts. But the case also recognized that admission itself is a judicial function, and that the court was not bound by the recommendation of an examining board created by the legislature.

Several recent cases from the surrounding western states of Arizona,

¹²⁹125 Mont. 607, 608, 233 P.2d 399, 400 (1951).

¹³⁰101 Mont. 490, 501, 54 P.2d 882, 887 (1936).

¹³¹112 Mont. 129, 137, 113 P.2d 790, 793 (1941).

¹³²208 Cal. 439, 281 Pac. 1018, 1020, 66 A.L.R. 1507, 1509, 1510 (1929).

Idaho, Kansas, and Washington are in accord with the general rule stated in the A.L.R. discussion.¹⁴³ Utah and possibly New Mexico have recently reaffirmed the general rule, too, though with the reservation that the ultimate power over admission is in the courts.¹⁴⁴

The federal courts follow the rule that the judiciary has exclusive control over the standards for the admission of attorneys;¹⁴⁵ Indiana is typical of a few state courts which take the same position.¹⁴⁶

However, the view which seems most appropriate to the situation now existing in Montana is that expressed by the Supreme Court of Florida in *Petition of Florida State Bar Ass'n.*¹⁴⁷ The court there affirmed its inherent power over admissions of attorneys, but held that inasmuch as it had acquiesced in legislative regulation of the area for more than 100 years, any new requirements should be prescribed by the legislature. The Montana Supreme Court has acquiesced in legislative regulation of admissions, at least as to the basic standards, for 63 years.

A few years after the Florida court took the above position, the legislature abdicated the field and gave the court exclusive power to regulate admissions,¹⁴⁸ though it reserved the right to reenter the field at a later date. In 1957 the legislature of South Carolina expressly recognized the inherent power of its state supreme court over bar admission standards, and repealed all the legislative enactments in the field.¹⁴⁹

If a state supreme court acts in direct opposition to the wishes of the state legislature in regard to admission standards, the legislature may force the court into a very awkward position. For example, a few years back the Supreme Judicial Court of Massachusetts adopted a rule which limited admission applicants to four attempts at the bar examination. The legislature then passed a statute forbidding any such limitation. At that point the court rescinded its rule.¹⁵⁰

¹⁴³Application of Courtney, 83 Ariz. 231, 319 P.2d 991, 992, 993 (1957), affirmed legislative power to control admission standards, though with the reservation stated in the Brydonjack case, note 144 *supra*; Application of Kaufman, 69 Idaho 297, 206 P.2d 528, 539 (1949), affirmed the legislative power to fix minimum but not maximum standards; *In re Cox*, 164 Kan. 160, 188 P.2d 652, 657 (1948), acquiesced in absolute legislative control over admission standards; *State ex rel. Laughlin v. Washington State Bar Ass'n.*, 26 Wash. 2d 914, 176 P.2d 301, 303 (1947), recognized legislative competence to regulate judicial admissions, but not to deprive the judiciary of power in that area.

¹⁴⁴Ruckenbrod v. Mullins, 102 Utah 548, 133 P.2d 325, 330 (1943); Henington v. State Board of Bar Examiners, 60 N.M. 393, 291 P.2d 1108, 1110 (1956) (by implication).

¹⁴⁵*Ex parte Secombe*, 60 U.S. (19 How.) 9, 13 (1856); *Laughlin v. Clephane*, 77 F. Supp. 103, 105, 106 (D.D.C. 1947). Cf. *Ex parte Garland*, 71 U.S. (4 Wall.) 333, 378, 379 (1866); *Randall v. Brigham*, 74 U.S. (7 Wall.) 523, 535 (1868).

¹⁴⁶*In re Day*, 181 Ill. 73, 54 N.E. 646, 651-53 (1899).

¹⁴⁷134 Fla. 851, 186 So. 280, 285, 286 (1938).

¹⁴⁸FLA. STAT. § 454.021 (1955).

¹⁴⁹*Inherent Power of the Court in South Carolina*. 26 BAR EXAM. 103 (1957).

¹⁵⁰Eckler, note 134 *supra*, at 31.

CONCLUSION

In summary, Montana's admission standards are deficient in the following areas:

(1) In permitting applicants to establish pre-legal education requirements by an "equivalency" examination. Montana is also behind the current trend, though on a par with many other jurisdictions, in requiring only two years of pre-legal study.

(2) In permitting applicants to qualify for the bar examination through correspondence study.

(3) In permitting applicants to satisfy the legal education requirements by two years study exclusively in a law office. Most of the minority of states which permit office study require more time than Montana does, and much more extensive supervision.

(4) In allowing two years of law school study to qualify an applicant. The majority of jurisdictions now require either three years of law school or that all applicants be law school graduates; and most of these jurisdictions also require that the law school be approved either by the American Bar Association (or Association of American Law Schools), or by a state approving agency. Only Georgia also accepts two years of law school.

(5) In allowing attorneys admitted to practice in other jurisdictions to be admitted on motion in Montana after only two years practice in their former jurisdictions. The average requirement is five years practice elsewhere.

(6) In permitting an applicant to take the bar examination an indefinite number of times.

Montana is behind the current trends, though still on a par with the majority of jurisdictions, in the following areas:

(1) In not requiring all law students who intend to take the bar examination to register with the bar examining authority at the time they begin their law studies.

(2) In not requiring a character investigation or verified character questionnaire on *all* applicants. There is a relatively new trend which Montana also has not yet adopted, but which is in force in a few jurisdictions, requiring fingerprinting of all applicants.

(3) In not periodically evaluating the efficacy of the bar examination.

(4) In not taking greater advantage of the national bar examination question and answer pool.

Montana is on a par with the majority of jurisdictions and in keeping with the current trends in these areas:

(1) Qualifications of bar examiners and stability of membership on the examining board.

(2) Residence requirements.

Montana's requirements in the entire area of admissions by reciprocity, excepting the number of years practice required, are more stringent and exacting than the standards in a number of other states. The present rules probably will require no alteration in the existing requirements of the N.C.B.E. character investigation, the detailed affidavit reporting any prior professional delinquencies, and the certificate of good standing from the presiding judge of the supreme court of the applicant's former jurisdiction.

These comments made by Mr. Justice Metcalf in 1952 are still applicable to the status of our bar admission standards:¹⁶¹

The place to begin to tighten up admission requirements would appear to be in establishing stricter standards for permission to take the bar examination. . . . I am afraid that our loose interpretation of the rule allowing applicants to offer equivalent study or experience for academic pre-legal training holds out false hopes for most of the applicants who do not have adequate preparation. . . .

[I]t would appear that what is needed is not a piece-meal amendment but a re-evaluation of the whole process. . . .

[T]he initiative for needed changes in the court rules and examination procedures should come in this state from the Montana Bar Association.

CHARLES W. WILLEY

PROCEDURES FOR SUPPRESSING ILLEGALLY SEIZED EVIDENCE THE EXCLUSIONARY RULE

At common law, evidence which had been seized illegally was nevertheless admissible if otherwise competent. This rule was generally accepted by American courts until the United States Supreme Court, in *Weeks v. United States*,¹ held that the introduction at a trial of evidence obtained through an unreasonable search and seizure nullifies the rights guaranteed by the fourth amendment to the Constitution, and that timely application for return of the property should be granted, thus preventing its use in evidence. The Court has subsequently suggested that this rule, known as the "exclusionary rule," is not a mandate of the fourth amendment, but is a judicially created rule of evidence implied from the fourth amendment.²

Even if the exclusionary rule were considered a mandate of the fourth amendment, that amendment binds only the federal government. Nevertheless, following the *Weeks* case many states have voluntarily adopted a

¹⁶¹Note 100 *supra*, at 10-12.

¹232 U.S. 383 (1914).

²*Wolf v. Colorado*, 338 U.S. 25 (1949).